

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

December 26, 1986

The Honorable Stephen D. Neely
Pima County Attorney
Civil Division - Suite 300
177 North Church Avenue
Tucson, Arizona 85701-1117

Re: I86-121 (R86-151)

Dear Mr. Neely:

Pursuant to A.R.S. § 15-253(B), we have reviewed the opinions expressed in your letter to Robert Medlyn, Sahuarita School District, and revise your opinions as follows.

The district has asked if it may use proceeds to be received from the sale of a school site for improvements to real property and the painting of school buses. We understand that the district held a budget override election pursuant to A.R.S. § 15-481 in February, 1986 and that the district received extra revenues as a result of that override to be used over a 5 year period for maintenance and operations including the 1986-87 school year.

A.R.S. § 15-1102 provides in pertinent part:

A. The governing board may apply the proceeds from the sale, lease or long-term lease of school property to the maintenance and operation section or capital outlay section of the budget provided the school district has an outstanding bonded indebtedness of seven per cent of the current year's assessed valuation or less.

B. The proceeds from the sale of school property may be expended for maintenance and operation or capital outlay for a period of

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not less than three nor more than twenty-five years. During this period of time the revenues are specifically exempt from the revenue control limit or the capital outlay revenue limit, whichever is applicable, except as provided in subsection E of this section.

C. During the period that proceeds from the sale of school property are used for the capital outlay section of the budget and are specifically exempt from the capital outlay revenue limit as provided in subsection B of this section, the school district shall not call an override election to exceed the capital outlay revenue limit or submit a bond issue to the public for new construction of school buildings.

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K. Notwithstanding subsections A, B, C, D and I of this section, if the school district electors approve the sale of school property and the use of the proceeds for the purchase of school sites or the construction, improvement or furnishing of school buildings, the proceeds from the sale shall be put in a separate fund for use for the approved purpose as prescribed by the uniform system of financial records. This fund is a continuing fund not subject to reversion, except that after ten years any unexpended monies shall be put in the school plant fund for use as prescribed in this section.

The district has no outstanding bonded indebtedness, therefore it qualifies to use the sale proceeds for capital outlay or maintenance and operation pursuant to subsection (A). The existence of the present budget override does not affect the district's ability to use the proceeds because subsection (C) prohibits only the calling of an override election during such periods. The district may therefore use sale proceeds, but must abide by the other statutory restrictions contained in A.R.S. § 15-1102.

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The sale of the school site must be approved by school district electors pursuant to A.R.S. §§ 15-342(10) and 15-491. In a 1985 opinion this office stated it was advisable that a district have property appraised and sell it based upon sealed competitive bids. Ariz.Atty.Gen.Op. I85-094.

The district has also asked how an election ballot relative to the sale should be worded. Since the governing board has decided how it wishes proceeds of the sale to be expended, we recommend that the property be fully & accurately described, that the ballot mention that it will be sold through the use of sealed competitive bids and specify what the proceeds will be used for. If the board wishes to retain some flexibility with regard to spending proceeds, it may use the relevant statutory language of A.R.S. § 15-1102(A) or (B), quoted earlier in this opinion, which states, in general terms, what the proceeds may be used for.

Finally, Mr. Medlyn has asked if the district board may exchange district property for land owned by Pima County. A.R.S. § 15-342(7) authorizes the district board to "sell . . . to the state, county or city any school property required for a public purpose, provided the sale . . . will not affect the normal operations of a school within the school district." Because an exchange of land between the school district and the state, county or city is both a sale and a purchase, the purchase aspect of an exchange requires an election, except when the property to be acquired is a school site that is included in a plan for the use of the reserve of capital outlay fund and within the cost limitations of A.R.S. § 15-341(A)(11). See Ariz.Atty.Gen.Ops. I86-119 and I86-120.

Sincerely,

Jessia Funkhouser
for BOB CORBIN
Attorney General

BC:TLM:JGF:pnw



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EDUCATION OPINION

ISSUE NO LATER THAN

12-26-86

October 24, 1986

86 - 151

Martin
10-28-86

Robert Medlyn
Sahuarita School District
P. O. Box 26
Sahuarita, Arizona 85629

Dear Robert:

In confirmation of our most recent telephone conversation, I will address the following questions you presented concerning Sahuarita School District:

- (1) Can proceeds received from the sale of a school site be utilized this year, in light of the recent budget override, and if so, how?
- (2) What, if any, procedures must be followed to effect the sale?
- (3) How should the election ballot presented to the voters concerning this sale be worded?
- (4) The District wishes to sell Anamax Park, which the District received as a donation, to Pima County. Can this sale be effected by "swapping" the park for land owned by Pima County? Must this sale be approved by the District's qualified electors to be valid?

In response to your first question, I will assume that Sahuarita's override, which you informed me was only for maintenance and operation, is ten percent. A.R.S. §15-1102 states as follows:

"A. The governing board may apply the proceeds from the sale, lease or long-term lease of school property to the maintenance and operation section or other capital items section of the budget provided the school district has an outstanding bonded indebtedness of seven per cent of the current year's assessed valuation or less.

B. The proceeds from the sale of school property may be expended for maintenance and operation or other capital items for a period of not less than three nor more than ten years. During this period of time the revenues are specifically exempt from the revenue control limit or the capital outlay revenue limit, whichever is applicable, except as provided in subsection E of this section. (Emphasis added)."

Since you informed me that Sahuarita has no bonded indebtedness, the district would come within the purview of subsection A. Subsection B indicates that you may expend the proceeds from the sale of land for not less than three or more than ten years.

However, since a ten percent budget override is in effect for Sahuarita's maintenance and operations, the district can only spend the proceeds on capital items sections of the budget other than maintenance and operations. If, however, Sahuarita is operating under an override of only five percent, a portion of the sale proceeds up to the amount equal to that of a ten percent override could be spent on the maintenance and operations section of the budget.

In other words, with a ten percent override in effect for maintenance and operations, Sahuarita can only spend sale proceeds on other capital items sections of the budget. If an override of less than ten percent is in effect for maintenance and operations, proceeds can be spent on maintenance and operations in an amount not more than the amount of a ten percent override.

Note that Subsection C indicates that during the period of expenditure of sale proceeds,

"the school district shall not call an override election for budget increases in the other capital items section of the budget or submit a bond issue to the public for new construction of school buildings."

This section is modified by subsection D, which allows an override election or the submission of a bond issue for the year following the final year in which sale proceeds are spent.

For your information, subsection I mandates how sale proceeds are to be spent should a district fail to qualify for expenditure under the law we've discussed. In that situation, the proceeds must be used to reduce school district taxes for that budget year.

Notwithstanding the subsections previously discussed, subsection K provides as follows:

"Notwithstanding subsections A, B, C, D and I of this section, if the school district electors approve the sale of school property and the use of the proceeds for the purchase of school sites or the construction, improvement or furnishing of school buildings, the proceeds from the sale shall be put in a separate fund for use for the approved purpose as prescribed by the uniform system of financial records. This fund is a continuing fund not subject to reversion, except that after ten years any unexpended monies shall be put in the school plant fund for use as prescribed in this section."

This provides the additional option of creating a separate fund for the purchase of school sites or the construction of school buildings, upon approval by the electors. This subsection also refers to the improvement and furnishing of school buildings. My understanding is that Sahuarita could spend proceeds on improvements and furnishings as authorized by the capital item section of the budget. As a practical matter, this subsection would be most important should you decide to purchase a school site and/or construct a school building.

In response to your second question, once the sale is approved by the voters, the District may proceed to sell the property in any manner it deems appropriate, as long as "sound business practices" are utilized. An appraisal of the property's value will be necessary. The sale may be made by auction, sealed bids, through a real estate agent, etc.

Concerning the wording of the election ballot itself, you informed me that you will contact the Tucson Unified School District in an attempt to obtain a sample ballot. We will then review and revise that ballot to meet the needs of the District.

In response to your fourth question, A.R.S. §15-342(7) states that the governing board of a school district may,

"Sell... to the ... county ... any school property required for a public purpose, provided the sale, lease or long-term lease of the property will not affect the normal operations of a school within the school district."

In other words, this need not be presented to the voters. A land "swap" with Pima County would probably be construed as a sale and therefore come within this statute. However, should

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you receive a potential school site from the County as part of a "swap", A.R.S. §15-341(11) may come into play, requiring an election to authorize the "purchase" of a school site.

Please do not hesitate to contact me should you wish to discuss this further. This opinion is being forwarded to the Attorney General for his review.

Sincerely yours,

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

By:

Jo Ann Sheperd
Jo Ann Sheperd
Deputy County Attorney

JS/las